IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

RSA.No. 176 of 2007()

AS.75/2000 of SUB COURT, CHERTHALA
OS.661/1996 of PRL.MUNSIFF COURT, CHERTHALA

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APPELLANTS/APPELLANTS/PLAINTIFFS

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1. KARTHYAYANI AMMA,
   POLATTUKUNDAM NIKERTHIL, AROOR MURI,
   AROOR VILLAGE, CHERTHALA, ALAPPUZHA DIST.

2. RADHAMANI AMMA, DO.

3. BHARGAVAN PILLAI, DO.

4. RADHAKRISHNA PILLAI, DO.

BY ADV. SRI.K.RAMANATHAN

RESPONDENTS/RESPONDENTS/DEFENDANTS

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1. DANDAPANI PILLAI, KOCHUVELIYIL,
   AROOR MURI, AROOR VILLAGE,
   CHERTHALA, ALAPPUZHA DIST.

2. RAVEENDRAN PILLAI, S.I. OF POLICE,
   QR.NO.35, POLICE LINE, PORT BLAIR,
   ANDAMAN.

3. PANKAJAKSHI AMMA,
   NAPPATTIPARAMBIL, THAIKKATTUKARA P.O.,
   MUTTOM, ALUVA-683 106.

4. K.P.SURESH KUMAR, DO.

5. K.K.PRAKASH THAMPI, DO.

6. K.R.RAJENDRAN, DO. DO.

7. K.R.ASHALATHA, DO.

8. T.P.SADAN PILLAI, C/O.G.K.SINGH,
22, TRIPATHI NAGAR, KHURSHED BAGH,
NEAR GANESH GANJ, LUCKNOW, U.P.

9. T.P.SIVAN PILLAI,
ALFAIRUZ, CO., P.B.NO.330,
MUSCAT, SULTANATE OF OMAN.

BY //

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.362/07 IN RSA 176/07

DISMISSED

14/2/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A.NO. 176 OF 2007

Dated 14th February 2007

J U D G M E N T

Plaintiffs in O.S.661/96 on the file of Munsiff court, Cherthala are the appellants. Respondents are defendants. Suit was filed for declaration and permanent prohibitory injunction. Case of appellants was that plaint schedule property originally belonged to Padmanabhan Pillai and by undue influence defendants 1 and 2 got executed Ext.B4 gift deed and after realising his folly donor Padmanabhan Pillai cancelled it under Ext.A2 cancellation deed and thereafter gifted the property in favour of appellants under Ext.A1 gift deed and therefore appellants have title to the property and they are entitled to get a decree for declaration of title as well as injunction. Respondent contended that Ext.B4 gift deed was acted upon and it was not vitiated by undue influence as alleged and after gift deed was accepted and acted upon donor is not competent to cancel it or to execute another gift deed in respect

of that property and therefore appellants are not entitled to claim any right under Ext.A1 and the suit is only to be dismissed. Learned Munsiff framed necessary issues. On the side of appellants Pws.1 and 2 were examined. Ext.A1 to A4 were marked. On the side of respondents DW1 was examined and Exts.B1 to B7 were marked. Learned Munsiff on the evidence found that Ext.B4 gift deed was executed on 26/9/1973 and donor Padmanabhan Pillai is not competent to cancel it on 12/6/1986 under Ext.A2 gift deed or execute Ext.A1 gift deed thereafter on the very next day and appellants are not entitled to decree sought for. The suit was dismissed. Appellants challenged decree and judgment before Sub court, Cherthala. Learned Sub Judge on reappreciation of evidence confirmed findings of learned Munsiff and dismissed appeal which is challenged in this second appeal.

2. Learned counsel appearing for appellants was heard. Arguments of learned counsel appearing for appellants was that Ext.B4 gift deed was not acted upon and Ext.A2 shows that Ext.B4 gift deed was executed due to undue influence of the donees, defendants 1 and 2 and as Padmanabhan Pillai, the donor is no more, burden is on respondents 1 and 2 to remove the

suspicion like the case of a will and courts below did not properly appreciate the evidence and appellants are entitled to get decree sought for.

3. It is admitted case that plaint schedule property originally belonged to Padmanabhan Pillai. First appellant is the wife and appellants 2 to 4 and respondents 8 and 9 their children. Ext.B4 gift deed was executed on 26/9/1973. Learned Munsiff and learned Sub Judge on the evidence found that Ext.B1 gift deed was acted upon. Ext.B5 series are tax receipts produced by respondents to prove that tax was paid for the property obtained under Ext.B4. Learned Sub Judge on reappreciation of evidence confirmed the finding. Finding of courts below that Ext.B4 gift deed was accepted and acted upon is a finding of fact which cannot be interfered in exercise of the powers of this court under Section 100 of Code of Civil Procedure. Once gift deed was executed, accepted and acted upon, as rightly found by courts below it cannot be cancelled by the donor. Gift could be cancelled only as provided under Section 126 of Transfer of Properties Act. Ext.A2 cancellation deed was executed 13 years after the execution of Ext.B4 gift deed. Both courts rightly found that Padmanabhan Pillai is not entitled

to cancel the gift deed after Ext.B4 gift deed was accepted and acted upon. Therefore under Ext.A1 gift deed executed by Padmanabhan Pillai on the next day of cancellation of Ext.B4 under Ext.A2, appellant cannot claim title to the property. Arguments of learned counsel appearing for appellant is that as Padmanabhan Pillai stated in Ext.A2 that Ext.B4 gift deed was executed by undue influence of defendants 1 and 2, burden is on respondents to remove the suspicion so cast and as suspicion was not removed, courts below should not have accepted Ext.B4 gift deed. Reliance was placed on the decision reported in **Pappoo v. Kuruvilla (1994 (2) KLT 278**). That was a decision on the execution of a will. When execution of will is surrendered by suspicious circumstances, burden is on the propounder to remove the suspicion to the satisfaction of the court. As found by courts below, that decision cannot be imported to a case of gift deed. When it is found that the gift deed was accepted and acted upon and appellant contended that gift deed was vitiated by undue influence, burden is on the appellant to establish that Ext.B4 gift deed was not voluntarily executed and it was vitiated by undue

influence. No evidence was adduced to establish that Ext.B4 gift deed was vitiated by undue influence. In such circumstances, appellants are not entitled to the decree for declaration or injunction sought for. No substantial question of law is involved in this appeal.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.